

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
JOSEPH CRACCO,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER  
JONATHAN CORREA, SHIELD 7869, TRANSIT DIVISION  
DISTRICT 4, POLICE OFFICER JOHN DOE (A FICTITIOUS  
NAME), AND CYRUS R. VANCE, JR., IN HIS OFFICIAL  
CAPACITY AS DISTRICT ATTORNEY FOR THE COUNTY  
OF NEW YORK,

Defendants.  
-----X

**DECLARATION OF  
RICHARD  
BAHRENBURG  
IN SUPPORT OF  
CITY DEFENDANTS'  
MOTION TO DISMISS**

14 Civ. 8235 (PAC)

**RICHARD BAHRENBURG**, an attorney duly admitted to practice law in the State of New York, declares pursuant to 28 U.S.C. § 1746, under penalty of perjury, that the following is true and correct:

1. I am an Assistant Corporation Counsel in the office of Zachary W. Carter, Corporation Counsel of the City of New York, attorney for defendants City of New York and Police Officer Jonathan Correa (hereinafter "Officer Correa") (hereinafter referred to collectively as "City Defendants"). As such, I am familiar with the facts and circumstances of this action and submit this declaration to set forth the relevant procedural history of this case and to place on the record the relevant documents in support of City Defendants' motion pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

2. On or about October 15, 2014, plaintiff filed a Complaint with this Court, naming only The City of New York, Officer Correa and an unidentified officer as defendants. A copy of plaintiff's original Complaint is annexed hereto as "Exhibit A."

3. On or about January 12, 2015, City Defendants informed this Court of their intent to move to dismiss and requested a Pre-motion Conference. See Letter Motion for Conference, dated January 12, 2015, Civil Docket Report, at Document Number 6.

4. A Pre-motion Conference was held before this Court on or about January 30, 2015. See Minute Entry, dated January 30, 2015, Civil Docket Report, at Document Number 8. At the Pre-motion Conference, plaintiff was granted permission to file an Amended Complaint, and the Court set a briefing schedule for City Defendants' motion to dismiss. Id.

5. On or about February 17, 2015, plaintiff filed an Amended Complaint, which, *inter alia*, added District Attorney Cyrus R. Vance, Jr. (hereinafter "D.A. Vance") as a defendant and set forth a request for declaratory relief as against defendant D.A. Vance only. A copy of the Amended Complaint is annexed hereto as "Exhibit B."

6. On or about March 10, 2015, defendant D.A. Vance requested a Pre-motion Conference. See Letter Motion for Conference, dated March 10, 2015, Civil Docket Report, at Document Number 15. On the same date, plaintiff requested an extension of time to respond to D.A. Vance's request for a Pre-motion Conference and proposed a joint briefing schedule, on consent of all parties, which this Court endorsed on or about March 11, 2015. See Letter dated March 10, 2015, Civil Docket Report, at Document Number 17; Order dated March 11, 2015, Civil Docket Report, at Document Number 18.

7. On about October 18, 2013, Officer Correa observed a clip of a knife at the exterior of plaintiff's pants pocket and recovered said knife from plaintiff's pants pocket. Upon information and belief, at that time, Officer Correa believed the knife was a gravity knife, and accordingly, arrested plaintiff on the charge of Criminal Possession of a Weapon in the Fourth Degree (N.Y.P.L. 265.01(1)). Annexed as "Exhibit C" is a copy of the Arrest Report pertaining to plaintiff's October 18, 2013 arrest. Annexed as "Exhibit E" is a copy of the NYPD PETS Property Clerk Invoice No. 1000403592, pertaining to plaintiff's arrest on October 18, 2013, which shows that Officer Correa recovered and vouchered as arrest evidence what he believed to be a gravity knife.

8. On or about July 8, 2014, plaintiff pleaded guilty to Disorderly Conduct in satisfaction of the criminal charge against him stemming from his October 18, 2013 arrest. Annexed collectively hereto as “Exhibit D” are copies of the Certificate of Disposition pertaining to Docket Number 2013CN009690, and the transcript of the proceeding held before the Honorable Erika Edwards, Criminal Court of the City of New York, County of New York, wherein plaintiff pleaded guilty to Disorderly Conduct.

9. Upon information and belief, a search of the City of New York’s records reveals that plaintiff did not file a Notice of Claim for the incidents alleged in the Amended Complaint.

Dated: New York, New York  
May 22, 2015

ZACHARY W. CARTER  
Corporation Counsel of the City of New York  
*Attorney for City Defendants*

/s/

By:

Richard Bahrenburg  
Assistant Corporation Counsel  
Special Federal Litigation Division  
100 Church Street, Room 3-154  
New York, New York 10007  
(212) 356-2338

To: James M. Maloney, Esq.  
P.O. Box 551  
33 Bayview Avenue  
Port Washington, New York 11050  
(516) 767-1326  
*Attorney for Plaintiff*  
*(via ECF and first class mail)*

cc: Patricia J. Bailey / Elizabeth Krasnow  
Assistant District Attorneys  
New York County District Attorney’s Office  
One Hogan Place  
New York, New York 10013  
(212) 335-4362  
*Attorney for defendant District Attorney Cyrus R. Vance, Jr.*  
*(via ECF and first class mail)*

Docket No. 14 Civ. 8235 (PAC)

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOSEPH CRACCO,

Plaintiff,

-against-

THE CITY OF NEW YORK, ET AL.

Defendants.

**NOTICE OF MOTION  
AND  
DECLARATION OF  
RICHARD BAHRENBURG,  
AND ITS EXHIBITS A THROUGH E**

***ZACHARY W. CARTER***

*Corporation Counsel of the City of New York  
Attorney for City Defendants  
100 Church Street, Rm. 3-154  
New York, N.Y. 10007*

*Of Counsel: Richard Bahrenburg  
Tel: (212) 356-2338  
LawManager No. 2014-038944*

*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 2015*

*..... Esq.*

*Attorney for .....*